

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR SROF-2013-S3 REMIC
TRUST 1,

Case No. 2:15-CV-1121 JCM (NJK)

ORDER

Plaintiff(s),

v.

PREMIER ONE HOLDINGS, INC., et al.,

Defendant(s).

Presently before the court is defendant Desert Shores Community Association's motion to dismiss. (ECF No. 14). Also before the court are defendant Desert Shores Villas Condominium Unit-Owners' Association, Inc.'s motion to dismiss or, alternatively, motion for summary judgment (ECF No. 24); defendant Premier One Holdings, Inc.'s motion to dismiss for lack of jurisdiction (ECF No. 28); defendant Premier One Holdings, Inc.'s motion for summary judgment (ECF No. 55); and plaintiff U.S. Bank, National Association's ("U.S. Bank") motion for summary judgment. (ECF No. 59). Finally, also before the court is a stipulation between U.S. Bank and defendant Desert Shores Community Association. (ECF No. 56).¹

U.S. Bank's complaint seeks to invalidate Desert Shores Community Association's foreclosure sale of a property, which purportedly extinguished U.S. Bank's beneficial interest in a mortgage loan with an outstanding balance of approximately \$82,000.00. U.S. Bank's complaint

¹ The stipulation was filed in the wrong format. (*See* ECF No. 57). The parties later refiled the stipulation in the proper format, (*see* ECF No. 58) and the court granted the stipulation. (*See* ECF No. 76). The original stipulation is thus moot and is denied.

1 alleges, amongst other things, that Nevada Revised Statute 116.3116 is unconstitutional. (ECF No.
2 1 at 5–6).

3 A party who files a pleading, written motion, or other paper drawing into question the
4 constitutionality of a state statute must promptly “file a notice of constitutional question stating
5 the question and identifying the paper that raises it, if . . . the parties do not include the state, one
6 of its agencies, or one of its officers or employees in an official capacity” FED. R. CIV. P.
7 5.1(a)(1)(B). Additionally, FRCP 5.1 requires the court to “certify to the appropriate attorney
8 general that a statute has been questioned” under 28 U.S.C. § 2403. FED. R. CIV. P. 5.1(b). Section
9 2403 states that the court “shall permit the [s]tate to intervene for presentation of evidence, if
10 evidence is otherwise admissible in the case, and for argument on the question of
11 constitutionality.” 28 U.S.C. § 2403(b).

12 Here, no notice has been provided to the attorney general of Nevada, and the court has not
13 certified the question to the attorney general. In light of the foregoing rule and statute, the court
14 will deny defendants’ motion without prejudice to allow: (1) U.S. Bank to file a notice of
15 constitutional question, (2) the court to comply, and (3) the attorney general to intervene. The
16 parties may renew their motions after the attorney general has been afforded time to respond.

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Desert Shores
18 Community Association’s motion to dismiss (ECF No. 14) be, and the same hereby is, DENIED
19 without prejudice.

20 IT IS FURTHER ORDERED that defendant Desert Shores Villas Condominium Unit-
21 Owners’ Association, Inc.’s motion to dismiss or, alternatively, motion for summary judgment
22 (ECF No. 24) be, and the same hereby is, DENIED without prejudice.

23 IT IS FURTHER ORDERED that defendant Premier One Holdings, Inc.’s motion to
24 dismiss for lack of jurisdiction (ECF No. 28) be, and the same hereby is, DENIED without
25 prejudice.

26 IT IS FURTHER ORDERED that defendant Premier One Holdings, Inc.’s motion for
27 summary judgment (ECF No. 55) be, and the same hereby is, DENIED without prejudice.
28

1 IT IS FURTHER ORDERED that plaintiff U.S. Bank, National Association's motion for
2 summary judgment. (ECF No. 59) be, and the same hereby is, DENIED without prejudice.

3 IT IS FURTHER ORDERED that plaintiff U.S. Bank, North America and defendant Desert
4 Shores Community Associations' stipulation for dismissal (ECF No. 56) be, and the same hereby
5 is, DENIED as moot.

6 IT IS FURTHER ORDERED that U.S. Bank, North America shall promptly file a notice
7 of constitutional question, pursuant to Federal Rule of Civil Procedure 5.1(a)(1)(B).

8 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
9 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
10 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
11 Nevada for presentation of argument on the question of the constitutionality of the statute.

12 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
13 certified mail to the Nevada attorney general.

14 DATED July 25, 2016.

15 
16 _____
UNITED STATES DISTRICT JUDGE